

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF PITT

2019 OCT 25 A 10:03

FILE NO.: 19 CVS 3050

IN THE MATTER OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING SOUGHT BY _____, C.S.C.

POLICE BENEVOLENT ASSOCIATION OF NORTH CAROLINA, INC. and NORTH CAROLINA FRATERNAL ORDER OF POLICE,

Petitioners.

CONSENT ORDER
ON PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT
AGENCY RECORDING
N.C.G.S. § 132-1.4A(g)

THIS MATTER came on to be heard before the undersigned Superior Court Judge upon the Petition for Release of Custodial Law Enforcement Agency Recording filed on October 25, 2019 by Petitioners, Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police, pursuant to N.C.G.S. § 132-1.4A(g) to determine whether release of law enforcement agency recordings related to this matter is warranted under Chapter 132 of the North Carolina General Statutes.

APPEARANCES

For Petitioners:

Peter J. Romary, Esq.
The Law Office of Peter Romary
147 Ellsworth Manor Drive
Hillsborough, North Carolina 27278
*Attorney for Petitioners,
Police Benevolent Association of North Carolina, Inc. and
North Carolina Fraternal Order of Police*

For Custodial Law
Enforcement Agency and
the Head of the Custodial
Law Enforcement
Agency:

Donald K. Phillips
Assistant City Attorney
City of Greenville
200 West Fifth Street
Post Office Box 7207
Greenville, North Carolina 27835
*Counsel for City of Greenville (Greenville Police Department)
and Designated Representative of Chief of Police Mark R.
Holtzman (Head of Custodial Law Enforcement Agency)*

For Pitt County District
Attorney's Office:

None Appearing

BASED UPON the careful consideration of the arguments presented at the hearing of this matter and the entire record in this proceeding, the undersigned makes the following findings of fact.

FINDINGS OF FACT

1. The Petitioners in this matter are Police Benevolent Association of North Carolina, Inc. and North Carolina Fraternal Order of Police (“Petitioners”). On October 25, 2019, on behalf of Petitioners, Petitioners’ attorney, Peter J. Romary, Esq. of The Law Office of Peter Romary (“Mr. Romary”), filed a Petition for Release of Custodial Law Enforcement Agency Recording pursuant to N.C.G.S. § 132-1.4A(g) on a form approved by the Administrative Office of the Courts (AOC-CV-270) (the “Petition”).

2. The City of Greenville (the “City”), is a municipal corporation organized and existing under the laws of the State of North Carolina.

3. Pursuant to Chapter 160A of the North Carolina General Statutes, the City has established, organized, and maintained an accredited law enforcement agency, the Greenville Police Department (“GPD”), with territorial jurisdiction and all law enforcement powers as authorized by statute, case law, and the common law of the State of North Carolina within the corporate limits of the City.

4. Petitioners seek footage from certain traffic/public safety cameras which are unrelated to any pending GPD criminal investigation.

5. The City and GPD consider Petitioners’ Petition to be a request for traffic/public safety cameras recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), which are not public record pursuant to N.C.G.S. § 132-1.4(c) and N.C.G.S. § 132-1.4A(b), and of which GPD owns or leases or whose personnel operates the equipment that created the recordings at the time the recordings were made.

6. GPD is the custodial law enforcement agency at issue in this matter as defined by N.C.G.S. § 132-1.4A(a)(2).

7. On or about October 25, 2019, in accordance with N.C.G.S. § 132-1.4A(g), Petitioners served a copy of the Petition upon Mark R. Holtzman, GPD Chief of Police, the head of the custodial law enforcement agency (“Chief Holtzman”), and upon the Honorable Faris C. Dixon, District Attorney for Prosecutorial District 3A, Pitt County (“District Attorney Dixon”).

8. On or about October 25, 2019, the Petitioners also served a courtesy copy of same to Donald K. Phillips, Assistant City Attorney and the attorney for the City and GPD (“Mr. Phillips”).

9. In accordance with N.C.G.S. § 132-1.4A(g), Chief Holtzman (“the head of the custodial law enforcement agency”) was notified of the Petition and has been given an opportunity

to be heard, by and through his designated representative, Mr. Phillips (“and those persons, or their designated representative,” have been “given an opportunity to be heard”).

10. In accordance with N.C.G.S. § 132-1.4A(g), the City is unaware of any law enforcement agency personnel whose image or voice are in any of the recordings at issue. Accordingly, there are no law enforcement agency personnel subject to being notified and given an opportunity to be heard in this matter.

11. Each person entitled to be notified of this proceeding, was given an opportunity to be heard, either individually or by such person’s designated representative.

12. GPD has custody of the following seven (7) recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), involving and/or related to Petitioners’ request and that are the subject of the Petition at issue:

GPD Recording				
No.	GPD File Name	Date	Type	Time
1.	TFC_GPD_5thReade_PTZ_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/25/2019	Traffic/Public Safety Camera	9:20 pm-10:45 pm 9:20 pm-9:30 pm 9:20 pm-9:30 pm
2.	UPT_GPD_5thCotanche_Quad5_N_R6a UPT_GPD_5thCotanche_Quad5_E_R6a UPT_GPD_5thCotanche_Quad5_W_R6a	09/25/2019	Traffic/Public Safety Camera	10:41 pm-10:43 pm 10:41 pm-10:43 pm 10:41 pm-10:43 pm
3.	UPT_GPD_5thCotanche_Quad1_SE_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/25/2019	Traffic/Public Safety Camera	10:42 pm-10:46 pm 10:42 pm-10:46 pm 10:42 pm-10:46 pm
4.	UPT_GPD_5thCotanche_Quad4_SW_R6a UPT_GPD_5thCotanche_Quad4_W_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am
5.	UPT_GPD_5thCotanche_Quad1_S_R6a UPT_GPD_5thCotanche_Quad1_SE_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am
6.	UPT_GPD_5thCotanche_S_R2	09/26/2019	Traffic/Public Safety Camera	1:16am-1:17 and 1:47 am-1:56 am
7.	TFC_GPD_5thReade_PTZ_R2 TFC_GPD_5thReade_W_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/26/2019	Traffic/Public Safety Camera	2:10 am-2:13 am

13. Herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 are City traffic/public safety camera “recordings,” as defined by N.C.G.S. § 132-1.4A(a)(6)(“[a] visual, audio, or visual and audio recording captured by . . . any other video or audio recording device . . .”). The parties agree and stipulate to the release of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in its entirety to Petitioners and Mr. Romary. The parties further agree and stipulate that GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in their entireties as herein defined are relevant to Petitioners’ and Mr. Romary’s request and are subject to release to Petitioners as defined by N.C.G.S. § 132-1.4A(a)(7) as further ordered herein.

14. All recordings at issue in this matter were made entirely in Pitt County, North Carolina.

15. The Court did not conduct an in-camera review of any recordings at issue in this case.

BASED UPON the foregoing findings of fact, the undersigned makes the following conclusions of law.

CONCLUSIONS OF LAW

1. The filing of this Petition is made in accordance with N.C.G.S. § 132-1.4A(g).
2. Each person entitled to be notified of the proceeding was given an opportunity to be heard, either individually or by such person’s designated representative.
3. To the extent that same exists, Petitioners have stated the date and approximate time of the activity captured in the recordings sought or have otherwise identified the activity with reasonable particularity sufficient to identify the recordings.
4. The Court has jurisdiction over the parties and the subject matter herein.
5. The Court has carefully reviewed N.C.G.S. § 132-1.4A in its entirety.
6. A “recording” is defined in N.C.G.S. § 132-1.4A(a)(6) as:

[a] visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
7. “Release,” as defined by N.C.G.S. § 132-1.4A(a)(7), means “[t]o provide a copy of a recording.”

8. All of the recordings at issue (GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7) are records of criminal investigations and/or records of criminal intelligence information pursuant to N.C.G.S. § 132-1.4. Additionally, all recordings at issue are not public records pursuant to N.C.G.S. § 132-1.4(a) and N.C.G.S. § 132-1.4A(b). Accordingly, the recordings at issue contain information that is otherwise exempt from disclosure or release under North Carolina law.

9. Pursuant to N.C.G.S. § 132-1.4A(g), Petitioners and Mr. Romary seek release of all of the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7.

10. N.C.G.S. § 132-1.4A(g) states in pertinent part:

In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

11. The Court has considered the standards set out in N.C.G.S. § 132-1.4A(g) and other standards the Court deems relevant in determining whether to order the release of all or a portion of the recordings at issue.

12. Pursuant to N.C.G.S. § 132-1.4A(g), “[t]he court shall release only those portions of the recording that are relevant to the person’s request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.”

The Court does hereby **ORDER, ADJUDGE, and DECREE** as follows:

1. That by stipulation, the parties agree that the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7, which are relevant to the Petitioners’ request, should be released, as defined by N.C.G.S. § 132-1.4A(a)(7), to Petitioners and Mr. Romary as further ordered herein.

2. That upon payment by Petitioners of \$5.00 per DVD to the City of Greenville, pursuant to N.C.G.S. § 132-1.4A(l) and *The City of Greenville Manual of Fees* (available at: <https://www.greenvillenc.gov/home/showdocument?id=6918>), with a copy of the receipt emailed

or otherwise provided to Mr. Phillips, GPD shall provide to Petitioners within ten (10) business days from the satisfactory receipt of said payment receipt, the requisite number of DVDs containing the contents and portions of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 as herein identified and ordered.

SO ORDERED, this the 27 day of October, 2019

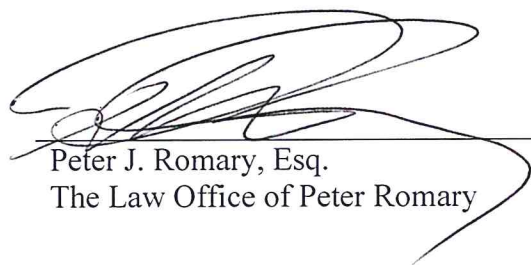


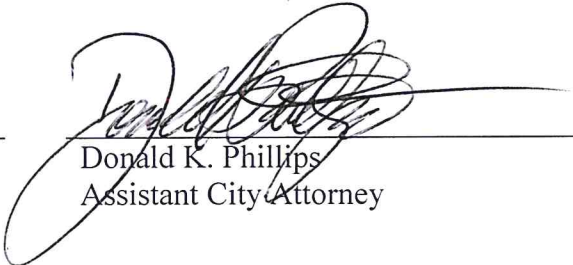
Superior Court Judge Presiding

CONSENTED TO:

For Petitioners:

For Custodial Law Enforcement Agency and
the Head of the Custodial Law Enforcement
Agency:



Peter J. Romary, Esq.
The Law Office of Peter Romary

Donald K. Phillips
Assistant City Attorney

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